

and, within 12 months after Nov. 29, 1983, submit to each House of Congress a report on effect which 5 U.S.C. 5383(b) (relating to maximum aggregate amount payable to a member of Senior Executive Service in a fiscal year) has had with respect to recruitment, retention, and morale of career appointees in Senior Executive Service.

#### § 5384. Performance awards in the Senior Executive Service

(a)(1) To encourage excellence in performance by career appointees, performance awards shall be paid to career appointees in accordance with the provisions of this section.

(2) Such awards shall be paid in a lump sum and shall be in addition to the basic pay paid under section 5382 of this title or any award paid under section 4507 of this title.

(b)(1) No performance award under this section shall be paid to any career appointee whose performance was determined to be less than fully successful at the time of the appointee's most recent performance appraisal and rating under subchapter II of chapter 43 of this title.

(2) The amount of a performance award under this section shall be determined by the agency head but may not be less than 5 percent nor more than 20 percent of the career appointee's rate of basic pay.

(3) The aggregate amount of performance awards paid under this section by an agency during any fiscal year may not exceed the greater of—

(A) an amount equal to 10 percent of the aggregate amount of basic pay paid to career appointees in such agency during the preceding fiscal year; or

(B) an amount equal to 20 percent of the average of the annual rates of basic pay paid to career appointees in such agency during the preceding fiscal year.

(c)(1) Performance awards paid by any agency under this section shall be based on recommendations by performance review boards established by such agency under section 4314 of this title.

(2) not<sup>1</sup> less than a majority of the members of any review board referred to in paragraph (1) shall be career appointees whenever making recommendations under such paragraph with respect to a career appointee. The requirement of the preceding sentence shall not apply in any case in which the Office of Personnel Management determines that there exists an insufficient number of career appointees available to comply with the requirement.

(d) The Office of Personnel Management may issue guidance to agencies concerning the proportion of Senior Executive Service salary expenses that may be appropriately applied to payment of performance awards and the distribution of awards.

(Added Pub. L. 95-454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1172; amended Pub. L. 98-615, title III, § 302, Nov. 8, 1984, 98 Stat. 3217; Pub. L. 101-136, title VI, § 625(a), Nov. 3, 1989, 103 Stat. 822; Pub. L. 105-277, div. A, § 101(h) [title VI, § 632(a)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-523.)

<sup>1</sup> So in original. Probably should be capitalized.

#### Editorial Notes

##### AMENDMENTS

1998—Subsec. (b)(3). Pub. L. 105-277 substituted “10 percent” for “3 percent” in subpar. (A) and substituted “20 percent” for “15 percent” in subpar. (B).

1989—Subsec. (c). Pub. L. 101-136 designated existing provisions as par. (1) and added par. (2).

1984—Subsec. (b)(2). Pub. L. 98-615, § 302(1), substituted “but may not be less than 5 percent nor more than 20 percent” for “but may not exceed 20 percent”.

Subsec. (b)(3). Pub. L. 98-615, § 302(2), substituted provisions limiting the aggregate amount of performance awards paid under this section by an agency during any fiscal year to the greater of 3 percent of the aggregate basic pay of career appointees in that agency during the preceding fiscal year or 15 percent of the average of the annual rates of basic pay of such appointees during such fiscal year for provisions limiting the number of career appointees paid performance awards under this section during any fiscal year to 50 percent of the number of Senior Executive Service positions in such agency, except for an agency having less than 4 such positions.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-277, div. A, § 101(h) [title VI, § 632(b)], Oct. 21, 1998, 112 Stat. 2681-480, 2681-523, provided that: “The amendments made by this section [amending this section] shall take effect on October 1, 1998, or the date of enactment of this Act [Oct. 21, 1998], whichever is later.”

##### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

##### EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415(a)(1), (b) of Pub. L. 95-454, set out as a note under section 3131 of this title.

##### LIMITATION ON NUMBER OF PERFORMANCE AWARDS FOR CAREER APPOINTEES

Section 306(c) of S. 2939, Ninety-seventh Congress, 2nd Session, as reported Sept. 22, 1982, and incorporated by reference in Pub. L. 97-276, § 101(e), Oct. 2, 1982, 96 Stat. 1189, to be effective as if enacted into law, provided that: “None of the funds appropriated by this Act or any other Act shall be used by any agency to pay performance awards in fiscal year 1983 under section 5384 of title 5, United States Code, or any comparable personnel system established on or after October 13, 1978, to more than 20 per centum of the number of Senior Executive Service or comparable personnel system positions in such agency: *Provided*, That an agency with less than five Senior Executive Service employees or equivalent positions may grant one such performance award.”

Similar provisions were contained in the following acts:

Pub. L. 97-51, §§ 101(c), 124, Oct. 1, 1981, 95 Stat. 959, 965.

Pub. L. 96-536, § 101(c), Dec. 16, 1980, 94 Stat. 3167.

Pub. L. 96-369, § 101(c), Oct. 1, 1980, 94 Stat. 1352.

Pub. L. 96-304, title III, § 303, July 8, 1980, 94 Stat. 927.

#### § 5385. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95-454, title IV, § 407(a), Oct. 13, 1978, 92 Stat. 1172.)

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE**

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415(a)(1), (b) of Pub. L. 95-454, set out as a note under section 3131 of this title.

**SUBCHAPTER IX—SPECIAL OCCUPATIONAL PAY SYSTEMS****Editorial Notes****AMENDMENTS**

1992—Pub. L. 102-378, § 2(36), Oct. 2, 1992, 106 Stat. 1351, struck out subchapter analysis, consisting of item 5391 “Definitions” and item 5392 “Establishment of special occupational pay systems”.

**§ 5391. Definitions**

For the purposes of this subchapter, “agency”, “employee”, and “position” have the meanings given them by section 5102.

(Added Pub. L. 101-509, title V, § 529 [title I, § 105(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1447.)

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE**

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101-509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

**§ 5392. Establishment of special occupational pay systems**

(a) Authority under this section may be exercised with respect to any occupation or group of occupations to which subchapter III applies (or would apply but for this section).

(b) Subject to subsection (a), the President’s pay agent (as referred to in section 5304(d)) may establish one or more special occupational pay systems for any positions within occupations or groups of occupations that the pay agent determines, for reasons of good administration, should not be classified under chapter 51 or subject to subchapter III.

(c) In establishing special occupational pay systems, the pay agent shall—

(1) identify occupations or groups of occupations for which chapter 51 and subchapter III do not function adequately;

(2) consider alternative approaches for determining the pay for employees in positions in such occupations or groups of occupations;

(3) give thorough consideration to the views of agencies employing such employees and labor organizations representing such employees, as well as other interested parties;

(4) publish a proposed plan for determining the pay of such employees in the Federal Register;

(5) conduct one or more public hearings;

(6) provide each House of Congress with a report at least 90 days in advance of the date the system is to take effect setting forth the details of the proposed plan; and

(7) not later than 30 days before the date the system is to take effect, publish in the Federal Register the details of the final plan for the special occupational pay system.

(d) A special occupational pay system may not—

(1) provide for a waiver of any law, rule, or regulation that could not be waived under section 4703(c); or

(2) provide a rate of basic pay for any employee in excess of the rate payable for level V of the Executive Schedule.

(e) Subject to subsection (d)(2), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 in the rates of pay under the General Schedule, each rate of pay established under this section shall be adjusted by such amount as the Office considers appropriate.

(Added Pub. L. 101-509, title V, § 529 [title I, § 105(a)(1)], Nov. 5, 1990, 104 Stat. 1427, 1448.)

**Editorial Notes****REFERENCES IN TEXT**

Level V of the Executive Schedule, referred to in subsec. (d)(2), is set out in section 5316 of this title.

The General Schedule, referred to in subsec. (e), is set out under section 5332 of this title.

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE**

Section effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101-509, set out as an Effective Date of 1990 Amendment note under section 5301 of this title.

**CHAPTER 54—HUMAN CAPITAL PERFORMANCE FUND****Sec.**

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**Editorial Notes****PRIOR PROVISIONS**

A prior chapter 54, consisting of sections 5401 to 5410, related to performance management and recognition system, prior to repeal by Pub. L. 103-89, § 3(a)(1), (c), Sept. 30, 1993, 107 Stat. 981, 983, eff. Nov. 1, 1993.

**Statutory Notes and Related Subsidiaries****TREATMENT OF EMPLOYEES COVERED BY PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM AS OF TERMINATION DATE**

Pub. L. 103-89, § 4, Sept. 30, 1993, 107 Stat. 983, provided that:

“(a) DEFINITIONS.—For purposes of this section—

“(1) the term ‘employee’ means an individual employed by an agency (within the meaning of section 7103(a)(3) of title 5, United States Code);

“(2) the term ‘performance management and recognition system’ means the performance management and recognition system under [former] chapter 54 of title 5, United States Code;

“(3) the term ‘basic pay’ does not include any amount payable under section 302 [set out as a note under section 5304 of this title] or title IV [see Short